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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Pia Daniel

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JACOBSON HOLMAN PLLC  
400 SEVENTH STREET N.W.  
SUITE 600  
WASHINGTON, DC 20004

EXAMINER

BASS, DIRK R

ART UNIT

PAPER NUMBER

1797

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/557,823	DANIEL, PIA	
	<b>Examiner</b>	<b>Art Unit</b>	
	DIRK BASS	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/25/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's response filed November 19, 2009 is acknowledged. Claims 1-16 are pending. Claims 2-3 are cancelled, claims 1 and 4-15 are amended, and claim 16 is newly added. Claims 1 and 4-16 are pending and further considered on the merits.

#### ***Response to Amendment***

In response to applicant's amendments, the examiner maintains and further clarifies the grounds of rejection set forth in the office action dated August 27, 2009 with respect to Kollar et al., USPA 2003/0135152.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 5-6, and 10-16** are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kollar et al., USPA 2003/0135152 (Kollar).

3. Regarding claims 1 and 16, Kollar discloses a blood treatment unit (fig. 1, 2a, 2b) comprising:

- a. A blood treatment device (REF 112, 118) which is part of an extracorporeal blood circulatory system;
- b. Actuators (REF 31-36 and ¶ 0096) in at least the extracorporeal blood circulatory system;
- c. A control unit (REF 10) for controlling the actuators (¶ 0096);

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- d. A display and input unit (REF 50) including a touch screen (REF 54) connected to the control unit, the display and input unit including a plurality of mode means ((¶ 0235-0236) showing various time modes of a blood treatment on the touch screen, the mode means being selectable by an operator via the touch screen and arranged with respect to one another in order of their occurrence in time, and including at least one blood treatment preparation means (¶ 0220-0221); and
  - e. The control unit identifies the running time mode and instructs the display and input unit to show the mode means selected from the other mode means using different symbols and establishes the end of one time mode and automatically initiates the beginning of the next and communicates this to the display and input unit, changing the representation of the selected mode means (¶ 0175, 0181-0182, 0221).
4. Regarding claims 5-6, Kollar discloses that the mode means are represented in the form of a cell at one edge of the touch screen and the remaining area of the touch screen represents further input means depending on the time mode (fig. 30 A-L).
5. Regarding claim 10, Kollar discloses that the control unit instructs the display and input unit to display a check mark when the steps have been completed (¶ 0236), where it is implicit that its input function is deactivated if the step is completed.
6. Regarding claim 11, Kollar discloses that the display and input unit displays the mode means in all time modes at the same point of the touch screen (fig. 30 A-L).

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7. Regarding claims 12-14, Kollar discloses that the blood treatment equipment comprises blood detectors and air detectors, and the control unit evaluates the values of the sensors to determine the end of a time mode and the presence of correctly mounted components (§ 0047, 0330, and fig. 33).

8. Regarding claim 15, Kollar discloses that the control unit determines the quantity of fluid conveyed by a controlled pump (REF 6, 22, 23) to determine the end of a time mode (§ 0053, 0397).

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. **Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kollar.

11. Regarding claim 4, Kollar discloses the mode means display on the touch screens but does not explicitly disclose that the blood treatment means on the touch screen has a larger area than the other mode means. However, the size of the blood treatment means on the touch screen presents no novel or unexpected result over the references and would be an obvious matter of design choice (*In re Launder*, 42 CCPA 886,222 F.2d 371,105 USPQ 446 (1955); *Flour City Architectural Metals v. Alpana Aluminum Products, Inc.*, 454 F. 2d 98, 172 USPQ 341 (8th Cir. 1972); *National Connector Corp. v. Malco Manufacturing Co.*, 392 F.2d 766. 157 USPQ 401 (8th Cir.) cert. denied, 393 U.S. 923, 159 USPQ 799 (1968)). Further it has been held that changes in configuration are a matter of design choice. *In re Dailey*, 357 F.2d 669, 149

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*USPQ 47 (CCPA 1966)*. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

12. **Claims 7-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kollar in view of Peterson et al., US 5247434 (Peterson).

13. Regarding claims 7-9, Kollar fails to explicitly disclose a blood treatment unit wherein the blood treatment device is a hemodialysis device. However, Peterson discloses a hemodialysis apparatus controlled by a control unit with a touch screen (Abstract) comprising: a blood treatment device (Fig. 1 ) which is part of an extracorporeal blood circulatory system with actuators (12, 14, 22, 24, 42, 50, 54, 56) controlled by a control unit (Fig. 7, C8/L36-41, examples include C13/L55-64 Blood Pump System, C16/L45-60 UF Control System), the control unit comprises a display and input unit (Fig. 8-11) with a touch screen (C8/L19-20) and various mode means that are selectable by an operator via the touch screen; the control unit identifies the running time mode and displays the selected mode using different symbols from the other modes and establishes the end of one time mode and automatically initiates the beginning of the next one, this is communicated to the display and input unit, changing the representation of the selected mode means (col. 11, l. 8-43).

14. At the time of invention, it would have been obvious to include the functionality of a hemodialysis device in the blood treatment unit of Kollar since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions,

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and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

15. Regarding claim 8, Peterson further discloses that the blood treatment preparation means comprises a rinse mode, self test mode and prime mode (col. 11, l. 28-29).

16. Regarding claim 9, Peterson further discloses that the blood after preparation means comprises modes for re-infusion (col. 35, l. 3-18) and purification (col. 32, l. 29-50).

### ***Response to Arguments***

17. Applicant's arguments filed November 19, 2009 have been fully considered but they are not persuasive.

18. Applicant argues that Kollar fails to disclose mode means displayed on the input unit which are arranged with respect to one another in their time sequence. In response, the examiner directs applicant's attention to the 35 U.S.C. 102(b) rejections above as well as paragraph 0221 of Kollar. Kollar discloses tabs arranged in sequential order and enabling the user to select only the operation in which certain prerequisites were completed.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIRK BASS whose telephone number is (571) 270-7370. The examiner can normally be reached on Mon - Fri (9am-4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571) 272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DRB/

Dirk R. Bass

/Vickie Kim/

Supervisory Patent Examiner, Art Unit 1797